

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KEVIN M. GONZALES,

Plaintiff,

v.

No. 1:25-cv-00663-SCY

ROBERT DAVID PEDERSON *et al.*,

Defendants.

**ORDER TO CURE DEFICIENCY
AND ORDER TO SHOW CAUSE**

This matter comes before the Court on *pro se* Plaintiff's Formal Petition and Emergency Relief, Demand for Justice, Accountability, and Federal Intervention, Doc. 1, filed July 14, 2025 (“Complaint”).

Order to Cure Deficiency

Federal law provides that the Clerk of Court “require the parties instituting any civil action, suit or proceeding in such court . . . to pay a filing fee of \$350 . . . [and] such additional fees only as are prescribed by the Judicial Conference of the United States.” 28 U.S.C. §§ 1914(a), (b).¹ The Court “may authorize the commencement, prosecution or defense of any suit, action or proceeding civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1).

¹ The fee for instituting any civil action, suit or proceeding is comprised of a \$350.00 filing fee, *see* 28 U.S.C. §1914, and a \$55.00 administrative fee.

Plaintiff has not paid the \$405.00 fee or filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). Plaintiff must either pay the fee or file an Application. The Guide for Pro Se Litigants, which the Clerk's Office mailed to Plaintiff on July 14, 2025, contains the form "Application to Proceed in District Court Without Prepaying Fees or Costs, (Long Form)."

Order to Show Cause

This case arises from proceedings in state court, impoundment of Plaintiff's motorcycle, detainment and transport of Plaintiff, and termination of parental rights. *See* Complaint at 2-5. Plaintiff asserts civil rights claims and claims pursuant to state law against state-court judges and clerks, the Gallup Police Department, the McKinley County Sheriff's Department, the New Mexico Judicial Standards and Ethics Commission, Governor Michelle Lujan Grisham, State legislators, and Monica D. Guillen.² *Id.* at 2-3. Plaintiff seeks monetary damages, "dismissal of all proceedings and charges," and restoration of parental rights. *Id.* at 5.

The Court has identified several deficiencies in the Complaint, described below, and orders Plaintiff to show cause why the Court should not dismiss this case. *See Lowrey v. Sandoval County Children Youth and Families Department*, 2023-WL-4560223 *2 (10th Cir. July 17, 2023) (stating: "Given a referral for non-dispositive pretrial matters, a magistrate judge may point out deficiencies in the complaint [and] order a litigant to show cause") (citing 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a)).

First, it appears the Court may lack jurisdiction over this case pursuant to the *Younger* abstention doctrine and/or the *Rooker-Feldman* doctrine due to the state court proceedings. As

² The Complaint does not indicate whether Monica D. Guillen is a state actor or describe her actions other than stating she "[c]ommited perjury, slander, and abuse of process leading to parental alienation, falsified state records, and obstruction of lawful remedy." Complaint at 2.

the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction *sua sponte*”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir. 1988)).

The *Younger* abstention doctrine “dictates that federal courts not interfere with state court proceedings . . . when such relief could adequately be sought before the state court.” *Rienhardt v. Kelly*, 164 F.3d 1296, 1302 (10th Cir. 1999); *D.L. v. Unified School Dist. No. 497*, 392 F.3d 1223, 1228 (10th Cir. 2004) (“*Younger* abstention is jurisdictional”) (citing *Steel Co. v. Citizens for a Better Env.*, 523 U.S. 83, 100 n.3 (1998))). In determining whether *Younger* abstention is appropriate, the Court considers whether:

(1) there is an ongoing state . . . civil . . . proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies. *Younger* abstention is non-discretionary; it must be invoked once the three conditions are met, absent extraordinary circumstances.

Amanatullah v. Colo. Bd. of Med. Exam'rs, 187 F.3d 1160, 1163 (10th Cir. 1999) (citations omitted). *Younger*, however, only applies in three “exceptional” categories of state proceedings: “when the state proceedings are (1) criminal prosecutions; (2) certain civil enforcement proceedings; or (3) civil proceedings involving certain orders that are uniquely in furtherance of the state courts’ ability to perform their judicial functions.” *Covington v. Humphries*, No. 24-1158, 2025 WL 1448661, at *3 (10th Cir. May 19, 2025) (citation modified). “If and only if the

state court proceeding falls within one of these enumerated exceptional types of cases . . . *may* courts analyze the propriety of abstention under *Younger*.” *Id.* (citation modified). !!

The *Rooker-Feldman* doctrine, on the other hand:

bars federal district courts from hearing cases “brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). Where the relief requested would necessarily undo the state court’s judgment, *Rooker-Feldman* deprives the district court of jurisdiction. Mo’s Express, 441 F.3d at 1237.

Velasquez v. Utah, 775 F. App’x 420, 422 (10th Cir. 2019); *Knox v. Bland*, 632 F.3d 1290, 1292 (10th Cir. 2011) (“Under [the *Rooker-Feldman*] doctrine, ‘a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party’s claim that the state judgment itself violates the loser’s federal rights.’”) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)). *Rooker-Feldman* applies “only to suits filed after state proceedings are final.” *Covington v. Humphries*, No. 24-1158, 2025 WL 1448661, at *2 (10th Cir. May 19, 2025) (quoting *Guttman v. Khalsa*, 446 F.3d 1027, 1032 (10th Cir. 2006)).

Here, the Complaint makes several references to state court proceedings, such as bringing claims against judges and a court clerk for denying motions and filings. Complaint at 2-4. Accordingly, the Court orders Plaintiff to show cause why the Court should not dismiss this case pursuant to *Younger* and/or *Rooker-Feldman*. Plaintiff must identify each case in state court in which Plaintiff is involved and that deals with the same facts alleged in the present complaint. For each case, Plaintiff must identify the name of the court and the case number, as well as indicate whether each state court proceeding is ongoing, has been dismissed, and whether Plaintiff has appealed any final judgment in the state court proceedings.

Second, it appears that the Court does not have jurisdiction over Plaintiff's claims against the state-court judges, state-court clerks, Governor Michelle Lujan Grisham, and state legislators ("individual State Defendants") in their official capacities. "Generally, states and their agencies are protected from suit by sovereign immunity, as guaranteed by the Eleventh Amendment."

Levy v. Kansas Dept. of Social and Rehabilitation Services, 789 F.3d 1164, 1169 (10th Cir. 2015). "However, there are three exceptions to the Eleventh Amendment's guarantee of sovereign immunity to states":

First, a state may consent to suit in federal court. Second, Congress may abrogate a state's sovereign immunity by appropriate legislation when it acts under Section 5 of the Fourteenth Amendment. Finally, under *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), a plaintiff may bring suit against individual state officers acting in their official capacities if the complaint alleges an ongoing violation of federal law and the plaintiff seeks prospective relief.

Id. (citing *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1166 (10th Cir. 2012) (internal citations omitted and altered)); *see also Turner v. National Council of State Boards of Nursing, Inc.*, 561 F. App'x 661, 665 (10th Cir. 2014) ("[Eleventh Amendment] immunity extends to arms of the state") (citing *Peterson v. Martinez*, 707 F.3d 1197, 1205 (10th Cir. 2013)); *Catanach v. Thomson*, 718 F. App'x 595, 597, 599-600 (10th Cir. 2017) ("Section 1983 expressly disallows injunctive relief against a judicial officer 'for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable.'") (emphasis added) (quoting 42 U.S.C. § 1983). In this case, there are no factual allegations showing that any of the three exceptions to the Eleventh Amendment's guarantee of sovereign immunity to states apply to Plaintiff's claims against the individual State Defendants.

Furthermore, it appears that Plaintiff seeks an injunction against the individual State Defendants, as he requests "immediate dismissal" of all proceedings and charges against him and "full restoration of parental rights." Complaint at 5. However,

[t]he Anti-Injunction Act ordinarily precludes injunctions against state-court proceedings. 28 U.S.C. § 2283. But three exceptions exist:

1. Congress “expressly authorized” an injunction.
2. The injunction is “necessary in aid of [the federal district court's] jurisdiction.”
3. The injunction is necessary to “protect or effectuate” a previous judgment in federal district court.

The Anti-Injunction Act’s exceptions are narrow and are not to be loosely construed. *Smith v. Bayer Corp.*, 564 U.S. 299, 131 S.Ct. 2368, 2375, 180 L.Ed.2d 341 (2011). As a result, courts should resolve doubts about the applicability of an exception in favor of allowing the state-court proceeding to continue. *Id.*, 131 S.Ct. at 2382.

Tooele County v. United States, 820 F.3d 1183, 1187-88 (10th Cir. 2016). The Court therefore orders Plaintiff to show cause why it should not dismiss the claims against the individual State Defendants in their official capacities for lack of jurisdiction.

Third, it appears that Plaintiff’s claims against the state-court judges and state-court clerks in their personal capacities are barred by judicial immunity. “[S]tate court judges are absolutely immune from monetary damages claims for actions taken in their judicial capacity, unless the actions are taken in the complete absence of all jurisdiction.” *Sawyer v. Gorman*, 317 F. App’x 725, 727 (10th Cir. 2008) (quoting *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)). “[I]mmunity which derives from judicial immunity may extend to persons other than a judge where performance of judicial acts or activity as an official aid of the judge is involved. Absolute judicial immunity has thus been extended to non-judicial officers, like clerks of court, where their duties had an integral relationship with the judicial process.” *Sawyer v. Gorman*, 317 F. App’x 725, 728 (10th Cir. 2008). The Court therefore orders Plaintiff to show cause why it should not dismiss the claims against the state-court judges and state-court clerks in their personal capacities.

Lastly, it appears that Plaintiff's Section 1983 claims against the Gallup Police Department and McKinley County Sheriff's Department fail. "Generally, governmental sub-units are not separate suable entities that may be sued under § 1983." *Hinton v. Dennis*, 362 F. App'x 904, 907 (10th Cir. 2010) (*citing Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985) (holding that City and County of Denver would remain as a defendant and dismissing complaint as to the City of Denver Police Department because it is not a separate suable entity)). As such, the Court orders Plaintiff to show cause why it should not dismiss Plaintiff's Section 1983 claims against the Gallup Police Department and McKinley County Sheriff's Department.

If Plaintiff agrees with the Court's analysis regarding these deficiencies in his complaint, rather than show cause, he may amend his complaint. The amended complaint must identify each Defendant Plaintiff is asserting claims against and clearly state what each Defendant did to Plaintiff. *See Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007) ("[T]o state a claim in federal court, a complaint must explain what *each* defendant did to him or her; when [*each*] defendant did it; how [*each*] defendant's action harmed him or her; and, what specific legal right the plaintiff believes [*each*] defendant violated.") (emphasis in original). The amended complaint must comply with the Federal and Local Rules of Civil Procedure. *See, e.g.*, Fed. R. Civ. P. 10(b) ("A party must state its claims or defenses in numbered paragraphs").

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the "Local Rules").

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website (<http://www.nmd.uscourts.gov>).

Failure to comply with Court Orders and the Federal and Local Rules of Civil Procedure interferes with the judicial process and may result in monetary and non-monetary sanctions including filing restrictions and dismissal of this case. *See Fed. R. Civ. P. 41(b)* (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action”); *Gustafson v. Luke*, 696 F. App’x 352, 354 (10th Cir. 2017) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.”) (quoting *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)).

Compliance with Rule 11

The Court reminds Plaintiff of his obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiff to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

IT IS ORDERED that:

- (i) Plaintiff shall, within 21 days of entry of this Order, either pay the \$405.00 fee or file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). Failure to timely pay the \$405.00 fee or file an Application may result in dismissal of this case.
- (ii) Plaintiff shall, within 21 days of entry of this Order: (a) show cause why the Court should not dismiss this case or (b) filed an amended complaint. Failure to timely show cause or file an amended complaint may result in dismissal of this case.

Steve Yarbro
UNITED STATES MAGISTRATE JUDGE